

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

Terek Raheem Downing

Plaintiff,

v.

Correctional Officer Art Davis, Correctional
Officers and Staff - to be named later, Delaware
Correctional Center, First Corrections Medical
Inc., Thomas Carroll (Warden), M. Jane Brady,
Delaware Department of Corrections, Delaware
Department of Court and Transit

Defendants.

Case No. 1-05-cv-00568-SLR

**ANSWER AND DEFENSES OF
DEFENDANT CORRECTIONAL
OFFICER ART DAVIS, JR.**

JURY TRIAL REQUESTED

ANSWER AND DEFENSES OF DEFENDANT ART DAVIS, JR.

Correctional Officer Art Davis, Jr. ("Defendant"), by and through counsel, files this answer and additional defenses to the complaint (the "Complaint") filed by Terek Raheem Downing ("Plaintiff") in the above-captioned matter.

I. Previous Lawsuits

Response: None required.

II. Exhaustion of Administrative Remedies

Response: Defendant lacks information and knowledge sufficient to form a belief as to the allegations contained in paragraphs A, B and C of Section II of the Complaint and therefore denies same.

III. Defendants

Response: Defendant admits only that he is employed by the Delaware Correctional Center and is stationed at the New Castle County Courthouse, 500 North King Street, Wilmington, DE 19801 (the "Courthouse"). Defendant lacks information and knowledge sufficient to form a belief as to the remaining allegations contained in paragraphs (1) through (8) of Section III of the Complaint and therefore denies same.

IV. Statement of Claim

1. On 9/22/03 at around 9 am-3 pm I was at the New Castle County Court House in Wilmington, DE.

Response: Defendant admits only that Plaintiff was at the Courthouse on or about September 22, 2003 within the period between 9:00 a.m. and 3:00 p.m.

2. I was in a holding cell by myself.

Response: Admitted. By way of inmate further answer, Plaintiff was a security risk and was therefore required to be placed in a holding cell by himself.

3. The cell door was opened by Officer Davis.

Response: Admitted.

4. I was placed in handcuffs and shackles. Along with the handcuffs and shackles, I had a chain go around my waist that the handcuffs hooked up to.

Response: Defendant admits only that he placed handcuffs on and chained Plaintiff after Plaintiff was removed from the holding cell and that Plaintiff was wearing ankle shackles prior to being removed from the holding cell. The remaining allegations contained in the fourth sentence of Section IV of the Complaint are denied.

5. Once that was done he placed a black box and padlock to secure the handcuffs and chain together.

Response: Defendant admits only that he used a "black box" and padlock to secure the handcuffs and chain after Plaintiff was removed from the holding cell.

6. I realized that I was coming back to DCC, and I didn't see a judge, so I asked Officer Davis why did I come to court.

Response: Defendant admits only that Plaintiff repeatedly asked Defendant for the reasons Plaintiff was brought to the Courthouse. By way of further answer, when Defendant told Plaintiff he did not know why he was brought to the Courthouse, the Defendant became verbally abusive, agitated, non-compliant and disorderly. Defendant lacks information and knowledge

sufficient to form a belief as to the remaining allegations contained in the sixth sentence of Section IV of the Complaint and therefore denies same.

7. By this time we are walking back to another area where other inmates are waiting to go back.

Response: Defendant admits only that Defendant escorted Plaintiff through cell block "A" corridor to an area where other inmates were held (the "Transport Area") while awaiting to be transported back to their respective correctional facilities.

8. Once near the cell door I ask Officer Davis again why did I come to court, Officer Davis becomes angry and says something smart at which time I reply "look I only asked you a question, why are you acting like a bitch."

Response: Denied. By way of further answer, Plaintiff repeatedly asked Defendant for the reasons Plaintiff was brought to the Courthouse. Plaintiff became verbally abusive, agitated, non-compliant and disorderly when Defendant informed Plaintiff that Defendant did not know why Plaintiff had been brought to the Courthouse. Plaintiff in a loud and agitated voice repeatedly called Defendant a "bitch" and a "motherfucker" and was physically resisting Defendant's efforts to escort Plaintiff to the Transport Area which was Defendant's duty so to do.

9. Officer Davis comes to where I am standing and grabs the front of my shirt and jumpsuit scratching my neck in the process.

Response: Denied. By way of further answer, in the interest of safety in the cell block the Defendant had to remove the Plaintiff, who was verbally abusive, agitated, non-compliant and disorderly, from the view of other inmates held in the Transport Area and Defendant attempted to escort Plaintiff back to his holding cell, so as not to cause a disturbance in the cell block "A".

10. At the same time he kicks my shackles binging (bringing) me down to the ground.

Response: Denied. By way of further answer, Plaintiff remained abusive agitated, non-compliant and disorderly while physically resisting Defendant attempting to escort him back to the holding cell in cell block "B". Plaintiff fell on multiple occasions as a consequence of Plaintiff's own disorderly conduct. Each time Plaintiff fell, Defendant had to forcibly lift him off the floor.

11. Once down Officer Davis drags me 10 to 15 feet to a door where he kicks me once or twice before standing on the side of my face and head while he unlocks a door.

Response: Denied. By way of further answer, Plaintiff remained verbally abusive, agitated, non-compliant and disorderly while Defendant attempted to unlock a security door while attempting to escort him from cell block "A" to cell block "B".

12. By this time its 5 to 10 other guard[s] around.

Response: Defendant lacks information and knowledge sufficient to form a belief as to the allegations contained in the twelfth sentence of Section IV of the Complaint and therefore denies same.

13. Officer Davis drags me 10 to 15 feet to another door.

Response: Denied. By way of further answer, Plaintiff remained verbally abusive, agitated, non-compliant and disorderly while Defendant attempted to escort Plaintiff back to the holding cell in cell block "B".

14. I see a guard I know so I say, "Ewerds(sic) Please make him stop, I'm handcuffed!"

Response: Defendant lacks information and knowledge sufficient to form a belief as to the allegations contained in the 14th sentence of Section IV of the Complaint and therefore denies same. By way of further answer, Plaintiff at some point yelled something to a guard. At about the same time, Officer Edwards, responded to assist Defendant in attempting to escort Plaintiff back to the holding cell in cell block "B".

15. He tells me to just be quiet.

Response: Denied. By way of further answer, Officer Edwards ordered Plaintiff to "be quiet" and to "do what the officer [Defendant] tells you to do."

16. Officer Davis kick me some more.

Response: Denied.

17. While he is doing this I'm screaming for help, but no one dose (sic) anything.

Response: Denied.

18. Once again Officer Davis stands on the side of my face and head while unlocking the other door.

Response: Denied. By way of further answer, Defendant had to restrain Plaintiff, who had fallen to the floor as a result of his own disorderly conduct, by placing a knee on Plaintiff's back while attempting to open the door between cell block "A" block and cell block "B".

19. This door lead to a holding area with different cells.

Response: Denied. By way of further answer, cell block "A" is separated from cell block "B" holding cells by a door.

20. Officer Davis drags me to the back where he kicks and stumps my face and head repeatedly.

Response: Denied.

21. One of those kicks splits my eye open. It's blood everywhere.

Response: Denied. By way of further answer, Plaintiff remained abusive agitated, non-compliant and disorderly while physically resisting Defendant attempting to escort him back to the holding cell in cell block "B". Plaintiff fell on multiple occasions as a consequence of Plaintiff's own disorderly conduct. Each time Plaintiff fell, Defendant had to forcibly lift him off the floor.

22. After a few more kicks he drags me to a cell farther back and kicks me once more before locking me in.

Response: Denied. By way of further answer as a result of Plaintiff's continuing verbal abuse, agitated, non-compliant and disorderly conduct, Defendant had to forcibly place Plaintiff into the holding cell in cell block "B".

23. My eye will not stop bleeding.

Response: Defendant lacks information and knowledge sufficient to form a belief as to the allegations contained in the twenty-first sentence of Section IV of the Complaint and therefore denies same.

24. 5-10 minutes later a Lt. comes with another guard.

Response: Defendant lacks information and knowledge sufficient to form a belief as to the allegations contained in the twenty-second sentence of Section IV of the Complaint and therefore denies same.

25. They take me to another cell up front where I tell them what happened.

Response: Defendant lacks information and knowledge sufficient to form a belief as to the allegations contained in the twenty-third sentence of Section IV of the Complaint and therefore denies same.

26. I need medical help, but all they do is take some paper towels and tape my eye up, and leave me in there for like 1 hour and a half or more.

Response: Defendant lacks information and knowledge sufficient to form a belief as to the allegations contained in the twenty-fourth sentence of Section IV of the Complaint and therefore denies same.

27. Blood is coming through the paper towel.

Response: Defendant lacks information and knowledge sufficient to form a belief as to the allegations contained in the twenty-fifth sentence of Section IV of the Complaint and therefore denies same.

28. The Lt. says I will see medical when I get down Smyrna.

Response: Defendant lacks information and knowledge sufficient to form a belief as to the allegations contained in the twenty-sixth sentence of Section IV of the Complaint and therefore denies same.

29. Nex [sic] 3 officers put me on a van and bring me back down here to Smyrna (DCC).

Response: Defendant lacks information and knowledge sufficient to form a belief as to the allegations contained in the twenty-seventh sentence of Section IV of the Complaint and therefore denies same.

30. Once here they hand me over to Officer Raney, Sgt. Washington, and Sgt. Jones.

Response: Defendant lacks information and knowledge sufficient to form a belief as to the allegations contained in the twenty-eighth sentence of Section IV of the Complaint and therefore denies same.

31. They call medical.

Response: Defendant lacks information and knowledge sufficient to form a belief as to the allegations contained in the twenty-ninth sentence of Section IV of the Complaint and therefore denies same.

32. While waiting Sgt. Washington tries to take pictures of my fact, but it has no film or something.

Response: Defendant lacks information and knowledge sufficient to form a belief as to the allegations contained in the thirtieth sentence of Section IV of the Complaint and therefore denies same.

33. A nurse comes and she say I need to see a doctor so I can get stitches.

Response: Defendant lacks information and knowledge sufficient to form a belief as to the allegations contained in the thirty-first sentence of Section IV of the Complaint and therefore denies same.

34. They take me to the infirmary where I still bleed because a doctor was not there.

Response: Defendant lacks information and knowledge sufficient to form a belief as to the allegations contained in the thirty-second sentence of Section IV of the Complaint and therefore denies same.

35. So I get pain medication and spent the night.

Response: Defendant lacks information and knowledge sufficient to form a belief as to the allegations contained in the thirty-third sentence of Section IV of the Complaint and therefore denies same.

36. I got to see a doctor and got stitches the next day.

Response: Defendant lacks information and knowledge sufficient to form a belief as to the allegations contained in the thirty-fourth sentence of Section IV of the Complaint and therefore denies same.

37. They would not take my picture, so once out of the infirmary I wrote a Grievance and Ron Drake of internal affairs.

Response: Defendant lacks information and knowledge sufficient to form a belief as to the allegations contained in the thirty-fifth sentence of Section IV of the Complaint and therefore denies same.

38. A couple days later I saw Captain Segars where he took pictures of me and took my bloody clothes.

Response: Defendant lacks information and knowledge sufficient to form a belief as to the allegations contained in the thirty-sixth sentence of Section IV of the Complaint and therefore denies same.

39. Within the next week or two I saw to (sic) men from internal affairs were (sic) I gave them my statement.

Response: Defendant lacks information and knowledge sufficient to form a belief as to the allegations contained in the thirty-seventh sentence of Section IV of the Complaint and therefore denies same.

40. I am an inmate at the Delaware Correctional Center.

Response: Admitted.

41. The Defendants are employees of the Delaware Department of Corrections and First Correctional Medical Inc.

Response: Defendant admits only that he is employed by the Delaware Department of Corrections. Defendant lacks information and knowledge sufficient to form a belief as to the remaining allegations contained in the thirty-ninth sentence of Section IV of the Complaint and therefore denies same.

42. These defendant are being sued in their individual and official capacities, as they were not performing their duties under the color of state law.

Response: The allegations contained in the fortieth sentence of Section IV of the Complaint state legal conclusions to which no response is required.

V. Relief

Response: Defendant denies that Plaintiff is entitled to the relief requested in the Complaint.

ADDITIONAL MATTERS

Defendant has not yet obtained full discovery in this matter and reserves the right to amend or otherwise supplement this Answer as may be appropriate. Without limiting the generality of the foregoing, and without regard to whether the additional defenses set forth below are affirmative defenses within the meaning of Fed. R. Civ. P. 8(c), and without conceding that any such defenses must be set forth in this Answer at this time, Defendant states as follows:

FIRST ADDITIONAL DEFENSE

Defendant has failed to state a claim upon which relief can be granted pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure based on, among other things, the defenses set forth below.

SECOND ADDITIONAL DEFENSE

Defendant is entitled to absolute and/or qualified immunity.

THIRD ADDITIONAL DEFENSE

Defendant is immune from liability under the Eleventh Amendment.

FOURTH ADDITIONAL DEFENSE

Plaintiff has failed to exhaust his administrative remedies.

FIFTH ADDITIONAL DEFENSE

Defendant, in his official capacity, is not a "person" within the meaning of 42 U.S.C. § 1983.

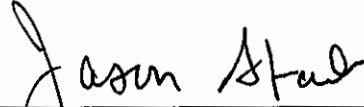
SIXTH ADDITIONAL DEFENSE

Plaintiff caused and/or was the proximate cause of his own alleged injuries.

WHEREFORE, Defendant requests that Plaintiff take nothing by way of the Complaint, that all of the relief requested by Plaintiff be denied, and that the Court grant such other and further relief as may be deemed just and proper.

Dated: August 17, 2006

BLANK ROME LLP

A handwritten signature in black ink, appearing to read "Jason Staib", is written over a horizontal line.

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